

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

WILLIAM BRECK, an Individual, pro se,

Case No. 3:12-cv-00649-MMD-VPC

Plaintiff,

ORDER

v.

ROGER DOYLE, et al.,

Defendants.

I. SUMMARY

This action is brought by *pro se* Plaintiff William Breck against Defendants in connection with a State Bar of Nevada disciplinary investigation and proceeding regarding Plaintiff and his law firm, The Public Interest Law Firm, Inc. ("TPI"). (Dkt. no. 14.) Plaintiff's sprawling First Amended Complaint ("FAC") asserts claims against sixteen (16) named individual Defendants, the State Bar of Nevada, the State of Nevada ex rel. the Supreme Court of Nevada and up to one hundred (100) unnamed doe defendants. (*Id.*)

Before the Court are six (6) different motions to dismiss (dkt. nos. 21, 24, 26, 29, 31, 44), two (2) motions for costs (dkt. nos. 32, 94), a motion to strike (dkt. no. 65) and a motion for extension of time (dkt. no. 104). For the reasons set out below, this matter is stayed on *Younger* abstention grounds and the Complaint is dismissed for failure to comply with Fed. R. Civ. P. 8(a).

II. BACKGROUND

Plaintiff filed the FAC on August 22, 2013. (Dkt. no. 14.) It names the following Defendants: (1) Roger Doyle; (2) Janeen Isaacson; (3) David Clark; (4) Patrick King; (5)

1 Glenn Machado; (6) J. Thomas Susich; (7) Laura Peters; (8) Kimberly Farmer; (9)
2 Kathleen Breckenridge; (10) Caren Jenkins; (11) Mikyla Miller; (12) Monica Caffaratti;
3 (13) Don Beury; (14) Yvette Chevalier; (15) Bryan Hunt; (16) Carol Hummel; (17) State
4 Bar of Nevada; and (18) State of Nevada ex rel. Supreme Court of Nevada.

5 The Northern Nevada Disciplinary Panel ("Panel") found that Plaintiff violated
6 Nevada Rules of Professional Conduct and recommended that he be barred from the
7 practice of law in Nevada. (Dkt. no. 19 at 2-3; dkt. no. 14, Exh. AM.) The thrust of the
8 FAC and Plaintiff's action is that the State Bar of Nevada, its attorneys, the adjudicator of
9 the Panel and others involved with Plaintiff's disciplinary proceeding allegedly
10 manipulated the disciplinary process to injure Plaintiff because his firm, TPI, worked with
11 homeowners to contest foreclosures.

12 The FAC asserts the following claims all relating to Plaintiff's attorney disciplinary
13 proceeding: (1) declaratory relief and injunction; (2) negligence; (3) violation of Nevada
14 open meeting laws; (4) abuse of process; (5) interference with business relations; and
15 (6) violation of constitutional rights pursuant to 42 U.S.C. § 1983 and conspiracy to
16 violate said rights. (Dkt. no. 14 at 120–131.)

17 The following motions are currently pending before the Court:

- 18 1. Defendant Roger Doyle's Motion to Dismiss. (Dkt. no. 21.) Plaintiff filed an
19 opposition (dkt. no. 35) and Doyle replied (dkt. no. 43).
- 20 2. Defendant Monica Caffaratti's Motion to Dismiss. (Dkt. no. 24.) Plaintiff filed an
21 opposition (dkt. no. 40) and Caffaratti replied (dkt. no. 55).
- 22 3. Defendant State of Nevada's Motion to Dismiss. (Dkt. no. 26.) Plaintiff filed an
23 opposition (dkt. no. 41) and State of Nevada replied (dkt. no. 60).
- 24 4. Defendants Kathleen Breckenridge, David Clark, Kimberly Farmer, Carol
25 Hummel, Janeen Isaacson, Caren Jenkins, Patrick King, Glenn Machado, J.
26 Thomas Susich and State Bar of Nevada's Motion to Dismiss pursuant to Fed.
27 R. Civ. P. 12(b)(6) and 12(b)(1) ("Defendants' MTD"). (Dkt. no. 29.)
28 Defendants Doyle, Miller, Hunt and Beary all join this motion. (Dkt. nos. 42, 45,

51, 93.) Plaintiff filed an opposition (dkt. no. 47) and Defendants replied (dkt. no. 61).

5. Defendant Yvette Chevalier's Motion to Dismiss. (Dkt. no. 31.) Plaintiff filed an opposition and corrected opposition to this motion (dkt. nos. 48, 50) and Chevalier replied (dkt. no. 70).

6. Defendant Yvette Chevalier's Motion for Security Costs. (Dkt. no. 32.) Plaintiff filed an opposition (dkt. no. 49) and Chevalier did not reply.

7. Defendant Mikyla Miller's Motion to Dismiss. (Dkt. no. 44.) Miller filed a corrected image (dkt. no. 46), Plaintiff filed an opposition (dkt. no. 52), Plaintiff filed a corrected opposition (dkt. no. 54) and Mille replied (dkt. no. 63).

8. Plaintiff's Motion to Strike Miller's reply regarding Miller's Motion to Dismiss. (Dkt. no. 65.) Miller filed an opposition (dkt. no. 71) and Plaintiff replied (dkt. no. 72).

9. Plaintiff's Motion for Costs. (Dkt. no. 94.) Defendants filed oppositions. (Dkt. nos. 98, 99, 100, 101, 102, 103.) Plaintiff filed several replies. (Dkt. nos. 105, 106, 107.)

10. Plaintiff's Motion for Extension of Time regarding Plaintiff's reply supporting Plaintiff's Motion for Costs. (Dkt. no. 104.) This motion is unopposed.

III. DISCUSSION

A. Defendants' MTD (dkt. no. 29)

Defendants' MTD raises threshold issues of subject matter jurisdiction and abstention. As resolution of these issues will have an effect on all parties and the pendency of this litigation, the Court will address Defendants' MTD first.

1. The *Rooker-Feldman* Doctrine

Pursuant to Fed. R. Civ. P. 12(b)(1), Defendants argue that this Court does not have subject matter jurisdiction over this action based on the *Rooker-Feldman* doctrine. (Dkt. no. 29 at 5, 6–7.)

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1 Dismissal under Rule 12(b)(1) is appropriate if the complaint, considered in its
2 entirety, fails to allege facts on its face that are sufficient to establish subject matter
3 jurisdiction. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d
4 981, 984-85 (9th Cir. 2008). Although the defendant is the moving party in a motion to
5 dismiss brought under Rule 12(b)(1), the plaintiff is the party invoking the court's
6 jurisdiction. As a result, the plaintiff bears the burden of proving that the case is properly
7 in federal court. See *In re Ford Motor Co./Citibank (S.D.), N.A.*, 264 F.3d 952, 957 (9th
8 Cir. 2001) (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).
9 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,
10 437 U.S. 365, 374 (1978). "A federal court is presumed to lack jurisdiction in a particular
11 case unless the contrary affirmatively appears." *Stock W., Inc. v. Confederated Tribes of*
12 *the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted).

13 Pursuant to Rule 12(b)(1), Defendants may assert that the *Rooker-Feldman*
14 doctrine deprives a federal district court of subject matter jurisdiction. See, e.g., *Reusser*
15 *v. Wachovia Bank, N.A.*, 525 F.3d 855, 858 (9th Cir. 2008); *Bianchi v. Rylaarsdam*, 334
16 F.3d 895, 898 (9th Cir. 2003). The *Rooker-Feldman* doctrine states that federal district
17 courts may not exercise subject matter jurisdiction over a de facto appeal from a state
18 court judgment. See *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 414–17 (1923); *D.C. Ct. of*
19 *Appeals, et al. v. Feldman*, 460 U.S. 462, 482 (1983). State court litigants may only
20 achieve federal review of state court judgments by filing a petition for a writ of certiorari
21 in the Supreme Court of the United States. *Feldman*, 460 U.S. at 482.

22 The *Rooker-Feldman* doctrine "is confined to cases of the kind from which the
23 doctrine acquired its name: cases brought by state-court losers complaining of injuries
24 caused by state-court judgments rendered before the district court proceedings
25 commenced and inviting district court review and rejection of those judgments." *Exxon*
26 *Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The Ninth Circuit has
27 explained that "[a] federal district court dealing with a suit that is, in part, a forbidden de
28 facto appeal from a judicial decision of a state court must refuse to hear the forbidden

1 appeal. As part of that refusal, it must also refuse to decide any issue raised in the suit
2 that is ‘inextricably intertwined’ with an issue resolved by the state court in its judicial
3 decision.” *Doe v. Mann*, 415 F.3d 1038, 1042 (9th Cir. 2005) (*quoting Noel v. Hall*, 341
4 F.3d 1148, 1158 (9th Cir. 2003)).

5 The FAC alleges that Defendants’ actions throughout the disciplinary process
6 violated Plaintiff’s due process and equal protection rights and that the Panel’s judgment
7 has caused irreparable damage to his reputation, business and standing in the
8 community. The FAC’s prayer for relief asks for monetary damages, an injunction
9 “ordering Defendants to cease and desist, and prohibiting Defendants from engaging in
10 any further actions for the purpose of causing damage or injury to the Plaintiff,
11 individually, and as Executive Director of TPI,” and a judgment from this Court declaring
12 the Panel’s disciplinary decision to be “void and unenforceable” and to have “no effect.”
13 (Dkt. no. 14 at 131-132.)

14 The Ninth Circuit dealt with a very similar factual scenario in *Mothershed v.*
15 *Justices of the Supreme Court*, 410 F.3d 602 (9th Cir. 2005). In that case, Mothershed
16 was an attorney licensed in Oklahoma and practicing in Arizona. *Id.* at 605. The
17 Oklahoma Bar initiated disciplinary proceedings against him, a disciplinary panel found
18 that he had unlawfully practiced law in Arizona, and the Supreme Court of Oklahoma
19 entered an order disbaring him. *Id.* Mothershed filed a suit in federal district court in
20 Arizona against justices of the Oklahoma court, members of disciplinary panel and bar
21 association attorneys and officials. *Id.* His complaint requested damages and an
22 injunction reinstating his membership in the Oklahoma Bar Association and prohibiting
23 defendants from interfering with his practice. *Id.* at 605–06. Mothershed alleged that the
24 defendants violated his due process rights and committed various state torts because
25 they did not adhere to a disciplinary proceeding rule regarding timing of hearings. *Id.* at
26 607. The Ninth Circuit found that these claims were barred by the *Rooker-Feldman*
27 doctrine because they amounted to particularized challenges to the disciplinary
28 proceeding’s results. *Id.* (“Mothershed is alleging that the Oklahoma defendants failed to

1 apply Rule 6.7 during his own state bar disciplinary hearing, which constitutes a
 2 ‘challenge[] to [a] state-court decision[] in [a] particular case[].’”) (*quoting Feldman*, 460
 3 U.S. at 486.)

4 However, as reinforced by the *Mothershed* opinion, the *Rooker-Feldman* doctrine
 5 may only be applied after state court proceedings have ended. See *Mothershed*, 410
 6 F.3d at 604 n.1 (*citing Exxon Mobil*, 544 U.S. at 291). In *Mothershed*, that meant *after*
 7 the Supreme Court of Oklahoma finally resolved that the disciplinary proceedings did not
 8 violate Mothershed’s due process rights. *Mothershed*, 410 F.3d at 604 n.1. In this case,
 9 though the Panel has made its decision, the Supreme Court of Nevada is still conducting
 10 its automatic review. (See dkt. no. 29 at 3; dkt. no. 47 at 6-7.) The *Rooker-Feldman*
 11 doctrine is therefore not applicable and cannot serve as a basis for dismissal.

12 The Supreme Court of the United States has stated that the *Rooker-Feldman*
 13 doctrine is not meant to “override or supplant preclusion doctrine or augment the
 14 circumscribed doctrines that allow federal courts to stay or dismiss proceedings in
 15 deference to state-court actions.” See *Exxon Mobil*, 544 U.S. at 284. Therefore,
 16 disposition of this action, once the state court proceedings are complete, will likely be
 17 governed by preclusion. *Id.* at 293. Until then, as fully described below, the *Younger*
 18 abstention doctrine, which is also raised by Defendants’ MTD (dkt. no. 29 at 10-13),
 19 compels this Court to stay this action in deference to the ongoing state court
 20 proceedings.

21 **2. Younger Abstention**

22 Under *Younger* abstention principles, a federal court may not exercise jurisdiction
 23 when doing so would interfere with ongoing state judicial proceedings. *Middlesex Cnty.*
 24 *Ethics Comm’n v. Garden State Bar Ass’n*, 457 U.S. 423, 431 (1982). Bar disciplinary
 25 proceedings are “judicial in nature” so as to warrant federal-court deference and
 26 *Younger* abstention. *Id.* at 433-44; see also *Hirsh v. Justices of the Sup. Ct. of Cal.*, 67
 27 F.3d 708, 712–13 (9th Cir.1995) (concluding that *Younger* abstention was appropriate
 28 where plaintiff faced ongoing state bar disciplinary proceedings when he brought suit in

1 federal court); *Mirch v. Beesely*, 316 F'Appx. 643, 644 (9th Cir. 2009) (affirming district
2 court's decision to decline to enjoin Nevada state bar disciplinary proceedings on the
3 basis of the abstention principles in *Younger*).

4 Pursuant to *Younger*, a federal court must abstain where: (1) state proceedings
5 are ongoing prior to the federal court conducting proceedings of substance on the
6 merits; (2) important state interests are involved; and (3) the plaintiff has an adequate
7 opportunity to litigate federal claims in the state proceedings. See *Middlesex*, 457 U.S. at
8 432; *M & A Gabae v. Cmty. Redev. Agency of City of L.A.*, 419 F.3d 1036, 1041 (9th
9 Cir. 2005). The Ninth Circuit has also "identified a fourth requirement: The requested
10 relief must seek to enjoin — or have the practical effect of enjoining — ongoing state
11 proceedings." *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1149 (9th Cir. 2007).

12 Here it is evident that all the *Younger* requirements are satisfied. First, as
13 previously discussed, the Panel's recommendation is currently being reviewed by the
14 Supreme Court of Nevada and Plaintiff has filed his opening brief in that proceeding.
15 (Dkt. no. 47 at 6-7.) Second, state disciplinary proceedings implicate important state
16 interests. See *Middlesex*, 457 U.S. at 433–34; see also *Flangas v. State Bar of Nev.*,
17 655 F.2d 946, 949 (9th Cir. 1981) (finding that *Younger* abstention normally bars the
18 district court from enjoining pending disciplinary proceeding in Nevada). Third, Plaintiff
19 will be able to raise his constitutional claims before the Supreme Court of Nevada. See,
20 e.g., *In re Discipline of Schaefer*, 25 P.3d 191 (Nev. 2001) (considering attorney's
21 arguments regarding due process and constitutionality of disciplinary rules in reviewing
22 Southern Nevada Disciplinary Board's recommendation of disbarment). Lastly, the Court
23 finds that this action would have the practical effect of enjoining the state proceeding as
24 Plaintiff explicitly asks this Court to declare the disciplinary decision to be "void and
25 unenforceable" and to have "no effect." (Dkt. no. 14 at 131-132.) Providing such relief

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1 would moot the pending appeal and stop the state court disciplinary proceedings in its
2 tracks.¹

3 Pursuant to the *Younger* abstention doctrine, the Court will stay this action until
4 the Supreme Court of Nevada has issued its ruling and the state proceeding is thus no
5 longer pending.² See *Gilbertson v. Albright*, 381 F.3d 965, 981 (9th Cir. 2004) (directing
6 courts to stay, as opposed to dismiss, where monetary damages are sought).

7 **B. Rule 8 Dismissal**

8 The FAC is dismissed without prejudice for failing to satisfy the notice pleading
9 standards of Fed. R. Civ. P. 8(a). The court may *sua sponte* dismiss a complaint for
10 failure to comply with Rule 8. See *Simmons v. Abruzzo*, 49 F.3d 83, 86 (2d Cir. 1995);
11 *Long v. JP Morgan Chase Bank, Nat. Ass'n*, 848 F. Supp. 2d 1166, 1173 (D. Haw.
12 2012).

13 A properly pled complaint must provide “a short and plain statement of the claim
14 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v.*
15 *Twombly*, 550 U.S. 544, 555 (2007). The Rule 8(a) notice pleading standard requires
16 Plaintiff to “give the defendant fair notice of what the . . . claim is and the grounds upon
17 which it rests.” *Twombly*, 550 U.S. at 555. (internal quotation marks and citation omitted).
18 The notice pleading requirements of Rule 8(a) can be violated not only “when a pleading
19 says too little,” but also “when a pleading says too much.” *Knapp v. Hogan*, 738 F.3d
20 1106, 1109 (9th Cir. 2013) (*citing Cafasso, U.S. ex rel. v. Gen.Dynamics C4 Sys., Inc.*,
21 637 F.3d 1047, 1058 (9th Cir. 2011) (“[W]e have never held — and we know of no

23 ¹The Court also notes that none of the exceptions to *Younger* apply. Plaintiff’s
24 argument against *Younger* abstention is that, although he seeks a declaratory judgment
25 and injunctive relief in the FAC, he has not yet filed a motion for that relief. (Dkt. no. 15-
26 16.) This argument is without merit. Plaintiff is the master of his complaint and
specifically asks this Court to overturn the disciplinary panel’s decision and effectively
enjoin the state proceedings.

27 ²Though not critical to this Court’s decision, the Court notes that both Plaintiff and
the moving Defendants have expressed that they are comfortable with a stay of this
28 action pending completion of the state proceedings. (See dkt. no. 47 at 11; dkt. no. 61 at 9.)

1 authority supporting the proposition — that a pleading may be of unlimited length and
2 opacity. Our cases instruct otherwise.”) (citations omitted); *McHenry v. Renne*, 84 F.3d
3 1172, 1179-80 (9th Cir. 1996) (affirming a dismissal under Rule 8, and stating that
4 “[p]rolix, confusing complaints such as the ones plaintiffs filed in this case impose unfair
5 burdens on litigants and judges”).

6 Although a *pro se* complaint is subject to a liberal construction, “even a *pro se*
7 complaint is subject to dismissal if the pleading fails to reasonably inform the adverse
8 party of the basis for the cause of action” as the FAC fails to do here.³ See *In re “Santa*
9 *Barbara Like It Is Today” Copyright Infringement Litig.*, 294 F.R.D. 105, 108 (D. Nev.
10 1982). The FAC fails to provide “a short and plain statement of the claim showing that
11 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The FAC is 132 pages long with
12 thirty-four (34) exhibits attached. It reads like an appellate brief, with repeated citations to
13 a lengthy record and an assumed familiarity with the disciplinary proceeding and its
14 outcome.⁴ The FAC is loaded with factual minutiae and citations to the record that would
15 be more appropriate at the summary judgment stage. In the FAC they only serve to
16 cloud Plaintiff’s claims and force opposing parties and the Court to sort through the
17 lengthy document and identify its key allegations. The FAC also includes unnecessary
18 repeating language such as reiteration of the same paragraphs after every new set of
19 alleged constitutional violations. Such repetition is unnecessary and further serves to
20 lengthen the complaint and unfairly burden the opposing parties and the Court.

21 Further, the FAC’s claims for relief do not identify which Defendants each claim is
22 asserted against. Plaintiff has named eighteen (18) defendants who are each entitled to
23 “fair notice” of what claims are asserted against them. *Twombly*, 550 U.S. at 555. Each
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25 ³The Court notes that, although it extends to Plaintiff the liberal pleading rules
26 associated with *pro se* plaintiffs, Plaintiff is an attorney.

27 ⁴The Court suspects that, due to time constraints, Plaintiff may have taken his
28 opening brief in his appeal before the Supreme Court of Nevada and adapted it to make
the FAC. This belief is bolstered by the fact that Plaintiff moved to file a 131-page
opening brief before the Supreme Court of Nevada and was denied. (Dkt. no. 47 at 6-7.)

1 claim for relief names some specific defendants and also refers to “Defendants” in
2 general, suggesting that each claim is asserted against all Defendants. This does not
3 appear to be Plaintiff’s intention, but the FAC needs to be made clearer to pass Rule 8’s
4 pleading standard.

5 The Court therefore determines that the FAC has failed to satisfy the notice
6 pleading requirements of Rule 8(a) and is dismissed without prejudice. Plaintiff is
7 granted leave to file an amended complaint that provides “a short and plain statement of
8 the claim showing” Plaintiff “is entitled to relief” after the Court’s order lifting the stay.
9 Fed. R. Civ. P. 8(a)(2). Should Plaintiff choose to file an amended complaint, he must
10 utilize the Court’s complaint form pursuant to LSR 2-1 and may insert additional pages,
11 up to thirty (30) pages, to supplement the complaint form.

12 As the Complaint is dismissed, this action is stayed on abstention grounds and
13 the allegations and named defendants in this action may change, the Court finds it is
14 appropriate to deny without prejudice the pending motions to dismiss (dkt nos. 21, 24,
15 26, 31, 44) so that those motions’ particularized arguments can be renewed in the event
16 that the stay is lifted and Plaintiff files an amended complaint. Chevalier’s motion for
17 security costs (dkt. no. 32) is denied without prejudice as well because it is closely
18 related to her motion to dismiss, which in part argues insufficient service of process (dkt.
19 no. 31).⁵ Similarly, the arguments in the filings regarding Plaintiff’s motion for costs (dkt.
20 no. 94) are closely related to many of the arguments made in the motions to dismiss that
21 assert insufficient service of process (dkt. nos. 1, 5, 44). Plaintiff’s motion for costs (dkt.
22 no. 94) is therefore also denied without prejudice.

23 Finally, Plaintiff’s motion to strike Miller’s reply regarding her motion to dismiss
24 (dkt. no. 65) and motion to extend time to file a reply regarding his motion for costs (dkt.
25 no. 104) are denied as moot.

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27 ⁵NRS 18.130 requires a demand for security costs be made in the limited time
28 allowed for answering the complaint, and Chevalier’s motion to dismiss asserts that she
was never properly served with the complaint. (Dkt. no. 31 at 2-3.)

1 **IV. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several
3 cases not discussed above. The Court has reviewed these arguments and cases and
4 determines that they do not warrant discussion as they do not affect the outcome of this
5 Order.


6 It is hereby ordered that Defendants' Motion to Dismiss (dkt. no. 29) is granted in
7 part and denied in part. This action is stayed on abstention grounds. Defendants'
8 remaining arguments are denied without prejudice to renew following the Court's order
9 lifting its stay.

10 It is further ordered that the remaining pending motions to dismiss (dkt. nos. 21,
11 24, 26, 31, 44), Chevalier's motion for security costs (dkt. no. 32), and Plaintiff's motion
12 for costs (dkt. no. 94) are denied without prejudice to renew following the Court's order
13 lifting its stay.

14 It is further ordered that Plaintiff's motion to strike (dkt. no. 65) and motion to
15 extend time (dkt. no. 104) are denied as moot.

16 It is further ordered that the Complaint is dismissed. Plaintiff is granted leave to
17 file an amended complaint that complies with Rule 8 consistent with this Order's
18 instructions within thirty (30) days of this Court's order lifting its stay.

19 DATED THIS 26th day of September 2014.
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23 MIRANDA M. DU
24 UNITED STATES DISTRICT JUDGE
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